

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

In Re:

Case No. 03-36959

Gerald E. Messler,

Debtor(s).

**NOTICE OF HEARING, VERIFIED MOTION FOR TURNOVER
TO THE TRUSTEE OF PROPERTY OF THE ESTATE AND
MEMORANDUM OF LAW IN SUPPORT OF MOTION**

TO: Gerald E. Messler, 1523 Aspen Drive, Eagan, MN 55122
Richard J. Pearson, P.O. Box 120088, New Brighton, MN 55112
United States Trustee, 1015 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415

1. Mary Jo A. Jensen-Carter, Trustee of the bankruptcy estate of the above-named Debtor(s) ("Trustee"), moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on **September 27, 2004 at 11:15 a.m.**, before the Honorable Dennis D. O'Brien, Judge of the U.S. Bankruptcy Court, in Courtroom Number 228A, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered no later than September 22, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail no later than September 16, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays).

IF A RESPONSE IS NOT TIMELY FILED, THE COURT, IN ITS DISCRETION, MAY GRANT THE RELIEF REQUESTED WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. The petition commencing this case was filed on October 13, 2003 and is now pending in this Court.
5. This motion arises under 11 U.S.C. §§ 541(a) and 542(a). This motion is filed pursuant to Bankruptcy Rule 9014 and Local Rules 9013-1, 9013-2, 9013-3 and 9013-5. The Trustee requests relief with respect to turnover of the following non-exempt assets:
 - 2003 state and federal income tax returns and refunds, if any

MOTION FOR TURNOVER

6. The 341 meeting of creditors was held on November 13, 2003. The Trustee has requested turnover at the 341 meeting and by letters. See copies of the Trustee's January 12, 2004 and April 27, 2004 letters to the Debtor and/or his attorney attached hereto as Exhibits A and B. The Trustee has not received the requested items. In order to fully administer the estate, the Trustee must obtain the requested items.
7. The Trustee also requests attorney fees in the amount of \$500.00, for the Trustee's costs and expenses in bringing this motion.

MEMORANDUM OF LAW

The law pertinent to this motion is found in 11 U.S.C. §§ 541(a) and 542(a). 11 U.S.C. § 541(a) provides that:

The commencement of a case under § 301, 302 or 303 of this title creates an estate. Such estate is comprised of all of the following property, wherever located and by whomever held:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of this case.

11 U.S.C. § 542 provides that:

- (a) Except as provided in subsections (c) or (d) of this section, an entity other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under Section 363 of this title, or that the debtor may exempt under Section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

The Trustee requests that the Court order the Debtor to turn over the requested non-exempt assets listed above.

WHEREFORE, the Trustee requests that this Court, issue an order that Debtor turn over the following assets:

- 2003 state and federal income tax returns and refunds, if any

The Trustee also requests attorney's fees in the amount of \$500.00 payable from Debtor.

Dated: September 1, 2004.

BUCKLEY & JENSEN

By /s/ Mary Jo A. Jensen-Carter
Mary Jo A. Jensen-Carter, #186041
1339 East County Road D
Vadnais Heights, MN 55109
(651) 486-7475

VERIFICATION

I, Mary Jo A. Jensen-Carter, Trustee and movant named in the motion, declare under penalty of perjury that the facts contained in the foregoing motion are true and correct to the best of my knowledge, information and belief.

Dated: September 1, 2004.

/s/ Mary Jo A. Jensen-Carter
Mary Jo A. Jensen-Carter, Trustee

Buckley & Jensen
Attorneys at Law
1339 East County Road D
Vadnais Heights, Minnesota 55109
Telephone (651) 486-7475
Facsimile (651) 486-7468
email: buckleyandjensen@aol.com

Mary Jo A. Jensen-Carter
Sheridan J. Buckley (Ret.)

Ann M. Gagner, CBA/Secretary

January 12, 2004

Gerald Messler
1523 Aspen Drive
Eagan, MN 55122

RE: 2003 State and Federal Income Tax Returns

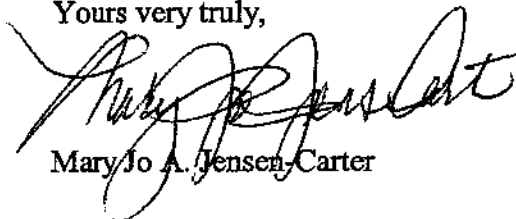
Dear Mr. Messler:

This is the office of the trustee of your bankruptcy estate who examined you at the First Meeting of Creditors.

A portion of your **2003 FEDERAL AND STATE INCOME TAX REFUNDS** belongs to your bankruptcy estate. You have previously agreed to provide complete copies of all tax returns to the trustee as soon as you file said returns with the Internal Revenue Service and the Minnesota Department of Revenue. **You must provide said returns on or before April 15, 2004.** If you file an extension, you must provide a copy of your application for extension by April 15, 2004. **No refunds will be sent to you until the trustee receives a copy of all of your returns. Additionally, if you receive any of your refunds, you must turn them over to the trustee in full.**

If you cash any refunds you do receive and spend the money, you may incur penalties for conversion of bankruptcy assets. Please be informed that although you may have received your discharge, you must comply with all orders of the Court or your discharge may be revoked. If your discharge is revoked, all of the debts that you listed in your bankruptcy schedules will again be due and owing.

Yours very truly,



Mary Jo A. Jensen-Carter

MJJ:ag

cc: Richard J. Pearson

EXHIBIT A

**Mary Jo A. Jensen-Carter
Trustee in Bankruptcy
1339 East County Road D
Vadnais Heights, MN 55109**

**Telephone (651) 486-7475
Facsimile (651) 486-7468**

April 27, 2004

Gerald Messler
1523 Aspen Drive
Eagan, MN 55122

RE: 2003 Tax Refunds

Dear Mr. Messler:

As you know, I am the trustee of your Chapter 7 bankruptcy estate. At your first meeting of creditors, I notified you that you would need to send me copies of your 2003 state and federal income tax returns when the returns were completed. At that time, I also told you that all or a portion of the refunds would be property of your bankruptcy estate and warned you not to spend any refunds you received until you had accounted to me for them.

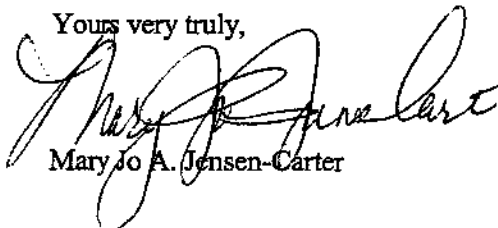
In January, 2004, I sent you a reminder letter asking that you send me copies of your 2003 state and federal income tax returns. Your tax returns should have been filed by April 15, 2004. To date, I have not received copies of your tax returns.

Unless I receive copies of your tax returns or documentation evidencing the fact that you filed for an extension of time in which to file the returns within seven days of the date of this letter, I intend to move the Court for an Order requiring you to turnover the tax returns. If you do not comply with that Court Order, I intend to file an action to revoke your discharge.

If your discharge is revoked, all of the debts that you listed in your bankruptcy schedules will again be due and owing.

**IT IS IMPERATIVE THAT YOU RESPOND TO THIS CORRESPONDENCE WITHIN
THE SEVEN DAY PERIOD.**

Yours very truly,



Mary Jo A. Jensen-Carter

cc: Richard J. Pearson

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

In Re:

Case No. 03-36959

Gerald E. Messler,

Debtor(s)

UNSWORN CERTIFICATE OF SERVICE

I, Ann M. Gagner, declare under penalty of perjury that on September 1, 2004, I served copies of the attached *Notice of Hearing, Verified Motion for Turnover to the Trustee of Property of the Estate, Memorandum of Law in Support of Motion and a proposed Order* by first class U.S. Mail, to the following parties:

| | |
|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| Gerald E. Messler 1523 Aspen Drive Eagan, MN 55122 | United States Trustee 1015 U.S. Courthouse 300 South Fourth Street Minneapolis, MN 55415 |
| Richard J. Pearson P.O. Box 120088 New Brighton, MN 55112 | |

Executed on: September 1, 2004.

Signed: /s/ Ann M. Gagner
Ann M. Gagner
Buckley & Jensen
1339 East County Road D
Vadnais Heights, MN 55109

**UNITED STATES BANKRUPTCY COURT
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Case No. 03-36959

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ORDER

The above-captioned matter came on before this Court on the motion of the Trustee, Mary Jo A. Jensen-Carter, for the turnover of the Debtor's non-exempt assets.

Based upon all of the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. The Trustee's Motion for Turnover is granted.
2. The Debtor shall turn over the following items to the Trustee within seven days of this Order:
 - 2003 state and federal income tax returns and refunds, if any
3. The Debtor shall also pay the Trustee \$500.00 as and for attorney's fees awarded in bringing this motion.

Dated: _____, 2004.

Dennis D. O'Brien
United States Bankruptcy Judge